

5/28/83
146457

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF OHIO

UNITED STATES OF AMERICA,

Plaintiff

vs.

No. C 80 - 1858

CHEMICAL RECOVERY SYSTEMS, INC.,

Defendant

CONSENT DECREE

The above-captioned Complaint having been filed on October 7, 1980 under the Clean Water Act, 33 U.S.C. 466 et seq., and the Resource Conservation and Recovery Act, 42 U.S.C. 6901 et seq., and the parties, the UNITED STATES OF AMERICA, for the Administrator of the United States Environmental Protection Agency (hereinafter "EPA") and CHEMICAL RECOVERY SYSTEMS, INC. (hereinafter "CRS") by their respective attorneys having consented to the entry of this Consent Decree:

NOW, THEREFORE, before taking any testimony, upon the pleadings, and without admission or adjudication of any issue of fact or law herein, and upon consent of the parties hereto, it is hereby ORDERED, ADJUDGED, AND DECREED as follows:

I. JURISDICTION

This Court has jurisdiction over the parties and subject matter of this action.

II. APPLICATION OF DECREE

This Decree shall apply to and be binding upon the United States and CRS (the parties), and the successors and assigns of each, as well as any agencies, instrumentalities, officers, directors, agents and servants thereof acting in their respective official capacities. CRS shall provide a copy of this Decree to each contractor it retains to perform work contemplated in this Decree and shall condition any contract for such work on compliance with this Decree and applicable provisions of the approved plans as contemplated in this Decree. A copy of this Decree shall be lodged with the Recorder of Deeds for Lorain County, Ohio, to provide notice to prospective purchasers of the CRS site located at 146 Locust Street, Elyria, Ohio (hereinafter "site").

III. OBJECTIVES

The objectives of the parties to this Decree are the abatement of any hazardous conditions at the CRS site which may have existed both before and after CRS acquired title to the site, the abatement of the contamination, if any, of the groundwater resulting from operations on the site, and abatement of discharges of pollutants, if any, to the Black River from the CRS site.

IV. REPRESENTATIONS

CRS represents that it has, as of the entry of this Decree:

- A. Removed all tanks, drums, barrels and other spent solvent containers from the site;
- B. Ceased the receipt, processing, and removal of spent solvents on site;

- C. Ceased from disposing or allowing, suffering or causing the disposal of any hazardous and solid wastes into the air and upon the ground at the site;
- D. Removed all temporary structures, as well as the Brighton Still and the building which housed it, the Rodney Hunt still, all storage tanks, and all buildings except the upper warehouse;
- E. Secured the CRS site by completing the existing fence so as to entirely enclose the facility and prevent access by unauthorized persons;
- F. Filled in the sump under the Brighton Still building and sealed the sump under the Rodney Hunt Still building with concrete;
- G. Conducted soil testing and groundwater studies;
- H. Leveled dikes and rough graded selected areas.

V. REMEDIAL MEASURES

- A. On or before June 15, 1983, CRS shall:
 - 1. Jointly conduct a visual inspection of the site with EPA technical personnel, to identify any spots of visibly contaminated soil. CRS shall give 10 working days' notice of the date of this inspection to EPA, and all reasonable efforts shall be made to accomodate the schedules of the EPA personnel to make the inspection; soils from all such contaminated areas may be tested by EPA for PCBs, chlorinated pesticides, and dioxins;
 - 2. Excavate areas of visibly contaminated soil identified by the above inspection to a depth of one foot;
 - 3. Excavate the perimeter of the Brighton Still building, in the northwest corner of the site, to a depth of one foot, and to a

distance of two feet beyond the perimeter of the foundation;

4. Dispose of all soil removed in these excavations in an approved waste disposal site;
 5. Backfill the excavated areas with clean clay-containing fills, and grade to conform with existing terrain;
 6. Grade the site toward the river to a slope of less than three per cent (3%);
- B. At the next horticulturally appropriate time, CRS will seed the site with appropriate grasses.
- C. CRS will conduct monitoring of the Black River adjacent to the site a total of at least four times following entry of this Decree, on the following basis:
1. Each monitoring shall consist of at least three composite samples, one of which is to be taken at the outfall from the sewer at CRS, and one downstream from the said outfall. The location of the third sample shall be determined by CRS.
 2. All sampling and analysis shall be conducted according to EPA protocols, copies of which shall be provided to CRS upon request, and at a qualified laboratory identified in advance to EPA.
 3. Sampling shall take place once each spring, during the first period of intensive melting of snow, or within 24 hours of the first rainfall of one inch or more after March 1, whichever occurs first; and once each fall, within 24 hours after the first rainfall of one inch or more following August 15; for two years next following entry of this Decree. At least 24 hours' notice of each said sampling shall be given to the Eastern District Office of EPA by telephone.
 4. All sample results shall be conveyed to the On-Scene Coordinator

for this site, at U.S. EPA, 230 South Dearborn, (5HR), Chicago, Illinois 60604, in writing, within ten days of their receipt by CRS.

VI. RESPONSIBILITIES AND LIABILITIES

A. CRS is ultimately responsible for designing and implementing all remedial measures. No advice, guidance, suggestions or comments by EPA on plans and reports submitted by CRS shall be construed to relieve CRS of this responsibility or transfer any of CRS' liability or obligation in this action to EPA.

B. Upon completion of the activities required in Paragraph V of this Decree, CRS shall submit a notice to the Director, Waste Management Division, Region V, U.S. EPA, certifying that such measures have been completed in full satisfaction of the requirements of this Decree.

C. Whenever, under the terms of this Decree, a report or other document is required to be forwarded by one Party to another, it shall be directed to the individuals at the addresses specified below, unless those individuals or their successors give notice in writing to the other Party of another individual designated to receive such communications. Reports or documents shall be provided to EPA:

Director, Waste Management Division
United States Environmental Protection Agency
Region V
230 South Dearborn Street
Chicago, Illinois 60604

and to CRS:

Chemical Recovery Systems, Inc.
c/o David Long, Statutory Agent
P.O. Box 427
300 Fourth Street
Elyria, Ohio 44036

D. Until termination of the provisions of this Consent Decree, the EPA and its contractors and consultants shall have authority to enter the CRS site at all reasonable times with prior notice to CRS, for the purpose of (1) monitoring the progress of CRS in carrying out remedial measures, and (2) observing sampling procedures required under Paragraph V of this Decree. Upon request by EPA, CRS shall split samples with EPA or its contractors or consultants in any sampling procedure required in this Decree.

E. All actions required to be taken by this Decree shall be undertaken in compliance with the requirements of applicable Federal laws, including the Occupational Safety and Health Act, 29 U.S.C. 651 et seq., and regulations promulgated thereunder.

F. All data, information, remedial plans, and other documents produced by CRS in the course of implementing this Consent Decree shall be available to the public, unless identified as confidential by CRS in conformance with 40 C.F.R. Part 2. The sampling and monitoring data and hydrological and geological information shall not be considered confidential. Documents or information identified as confidential will be disclosed only in accordance with the confidentiality regulations of 40 C.F.R. Part 2.

G. No conveyance of title, easement, or other interest in the site shall be consummated by CRS or subsequent holders of any interest in the property without written notice to EPA and notice to the putative conveyee as to the conditions of this Consent Decree. After completion of the requirements of this Consent Decree, the copy of the Consent Decree lodged with the Lorain County Recorder of Deeds shall constitute adequate notice to putative conveyees for purposes of this Decree.

VII. EXCUSABLE DELAY

The requirements of this Decree shall be implemented within the time limits contained in this Decree unless such performance is impeded by reasons which constitute excusable delay or unavoidable accident. "Excusable delay or unavoidable accident" is any delay in the completion, scheduling, or performance of a particular task, which arises from unforeseeable events entirely beyond the control and without fault or negligence of CRS. CRS shall notify EPA within 24 hours of the occurrence or discovery of any such event, and submit a proposed revised schedule for compliance. EPA may then agree to excuse or permit delay of such compliance. If EPA does not so agree, CRS may petition the Court for an excuse or a delay.

VIII. MODIFICATIONS

The Court shall retain jurisdiction of this matter for the purpose of enabling the Parties to this Decree to apply to the Court for any further order that may be needed to construe, carry out, modify, or enforce compliance with the terms and obligations of this Decree until the termination of this Decree in accordance with the provisions of Paragraph X.

IX. STIPULATED PENALTIES

Upon demand by EPA and upon the appropriate Motion and Order of this Court, CRS shall pay to the United States an amount not to exceed one thousand five hundred dollars (\$1,500) per day for each day that CRS fails to comply with the provisions of this Consent Decree. In exercising its discretion in seeking to have the Court impose a penalty hereunder, EPA shall take into account the magnitude of the violation, the duration of the violation, and any mitigating factors.

X. TERMINATION

The provisions of this Consent Decree shall terminate upon receipt by CRS of written notice from EPA that the remedial and monitoring provisions of this Decree have been successfully completed. Such notice shall issue within 60 days of the date that CRS performs the last act required by this Decree and so informs EPA, unless the Court orders otherwise.

XI. EXCEPTIONS AND RESERVATIONS

This Consent Decree shall in no way affect any third party actions existing as a part of this action, nor shall it in any way be construed so as to affect the rights or duties of the parties under 42 U.S.C. 9601 et seq., the Comprehensive Environmental Response, Compensation, and Liability Act.

XII. NOTICE AND ENTRY

The Parties hereby consent to the entry of this Consent Decree immediately upon compliance with the notice requirements of 33 CFR 50.7.

Dated and entered this _____ day of _____,
1983.

UNITED STATES DISTRICT JUDGE

The Parties agree and consent hereto.

for CHEMICAL RECOVERY SYSTEMS, INC.

CAROL DINKINS
Assistant Attorney General
Land and Natural Resources Division
United States Department of Justice
Washington, D.C. 20530

UNITED STATES ATTORNEY
Northern District of Ohio
Cleveland, Ohio

PAUL J. SCHAEFFER
Department of Justice
Washington, D.C.

U.S. EPA
Washington, D.C.

DRAFT 5/26/83 mhn

U.S. EPA Region V
Chicago, Illinois